

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

JANE JOYCE RICE,

Defendant.

Case No. 07-CV-019-B

Cheyenne, Wyoming  
January 4, 2008  
10:45 a.m.

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TRANSCRIPT OF MOTION PROCEEDINGS

BEFORE THE HONORABLE CLARENCE A. BRIMMER  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: MR. MICHAEL G. PITMAN  
Trial Attorney  
U.S. DEPARTMENT OF JUSTICE  
Tax Division  
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For the Defendant: MS. JANE RICE  
Pro Se  
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Court Reporter: Ms. Janet Davis, RMR, FCRR  
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## P R O C E E D I N G S

(Motion proceedings commenced  
10:45 a.m., January 4, 2008.)

THE COURT: Good morning, ladies and gentlemen. This is the case of the United States versus Jane Joyce Rice; Water Garden, Incorporated; Perpetual Legacy Corporation; Carte Blanche Trust and Newport Pacific Trust Company, Limited. And we have the motions of Miss Rice to set aside the clerk's entry of default and for reconsideration of the motion to quash service.

So I will be glad to hear you, Mrs. Rice.

MS. RICE: May I come forward?

Thank you, Judge Brimmer. I have some statements I would like to make. Could I give you a copy?

Would it be all right to give him a copy of what I'm going to say here?

I have a copy of what I have got prepared here that I could give to you if you would like.

Number one, for the record, my name is Jane Joyce Rice. My appearance at this hearing is special rather than general for the purpose of making a verbal record of this Court's lack of both in personam jurisdiction over me and in rem jurisdiction over the property of concern in the complaint.

Two, for the record, I declare my character as an

1 American citizen. I was born at Sheridan within the sovereign  
2 Wyoming state which is within neither a federal state or  
3 enclave. This declaration is made in writing by affidavit  
4 provided to this Court together with my motion to quash.

5 Three, for the record, I distinguish my character and  
6 status by declaring once again that I am not a U.S. citizen  
7 subject under the Fourteenth Amendment or as identified by the  
8 cases historically known as the Insular cases or as defined in  
9 Title 26 of the Code of Federal Regulations in  
10 Section 1.1-1(a)(2). I am not a, quote, taxpayer, end quote,  
11 as that term is defined by Title 26 of the United States Code.

12 Four, for the record, no administrative remedy is  
13 provided nor form provided or made available to me relative to  
14 the plaintiff's claims as all administrative procedures  
15 otherwise provided are for, quote, taxpayers, end quote, as  
16 that term is defined by Title 26 of the United States Code and  
17 do not apply to nontaxpayers.

18 Five, for the record, this district court, a  
19 territorial court under Article 1 of the United States  
20 Constitution, as distinguished from a constitutional court  
21 under Article III, is a legislative court, a congressional  
22 creation of 28 U.S.C. Section 132 under the direct control of  
23 Congress and is unable to provide me a remedy in this instance.

24 Six, this district court, a court of limited, as  
25 distinguished from general, jurisdiction is unable to access

1 the impartiality needed to determine my status and character.

2 In this regard, I notice this Court of Judge Leavy's decision  
3 and comments in Cochran versus Paul and Tacoma Lumber Company,  
4 73 Federal Supplement 288.

5 Seven, to demonstrate that U.S. District Courts are  
6 incapable of providing an impartial tribunal, I quote from  
7 Judge Wyzanski's decision in Lord versus Kelly et al., 240  
8 Federal Supplement 167, 1965, where he said, and I quote, "More  
9 than once the judges of a court have been indirectly reminded  
10 that they personally are taxpayers. No sophisticated person is  
11 unaware that even in this very commonwealth the Internal  
12 Revenue Service has been in possession of facts with respect to  
13 public officials which it has presented or shelved in order to  
14 serve what can only be called political ends, be they high or  
15 low. And a judge who knows the score is aware that every time  
16 his decisions offend the Internal Revenue Service, he is  
17 inviting a close inspection of his own returns," end quote by  
18 Judge Wyzanski.

19 Eight, for the record, the language of the Declaratory  
20 Judgment Act -- declaratory -- I said that wrong -- Judgment  
21 Act, Title 28, Section 2201, expressly precludes a federal  
22 court from granting declaratory relief in federal tax cases.  
23 Because a United States District Court is prohibited by this  
24 act from providing a remedy where the underlying issues involve  
25 Title 26 or its implementing regulations, this Court cannot

1 decide the legal relations or rights of the parties in this  
2 dispute.

3 See, for example, Willis versus Alexander, 575 Federal  
4 2d 495, Fifth Circuit, 1978; and West Chester Feed and Supply  
5 Company versus Erwin, 438 Federal 2d 929, Sixth Circuit, 1971;  
6 and Red Star Yeast and Products Company versus LaBudde, 83  
7 Federal 2d 394, Seventh Circuit, 1936.

8 Nine, for the record, this district court has no  
9 capacity to recognize my character or status or to provide me  
10 with adequate remedy. While the Anti-Injunction Act,  
11 26 U.S.C. Section 7421, does not specifically prohibit me, a  
12 nontaxpayer, from seeking an injunction against the United  
13 States, the Declaratory Judgment Act bars federal district  
14 courts from determining my lawful character, relations and  
15 rights juxtaposed to those of the plaintiff in matters of  
16 federal taxation.

17 Ten, my conclusion relative to remedy in this  
18 instance, Congress, by way of the Anti-Injunction Act, coupled  
19 with the Declaratory Judgment Act, has effectively barred any  
20 relief under Title 28 U.S.C. which only governs remedies or  
21 lack thereof for U.S. citizen subjects while providing no  
22 remedy for me, a native born American non-U.S. citizen subject.

23 Eleven, a metaphor best describing the circumstance I  
24 am describing is this is a tribal court and I am not a member  
25 of the tribe.

1 Twelve, for the record, in support of my motion to  
2 reconsider or for findings of fact and conclusions of law or to  
3 certify for appeal the denial of my amended motion to quash, I  
4 say: One, this Court lacks in rem jurisdiction to foreclose on  
5 real or personal property in Wyoming not situate in a federal  
6 enclave or territory of the United States.

7 THE COURT: Now, you must define for me what you  
8 regard as a federal enclave.

9 MS. RICE: Federally owned land within a state that  
10 has been signed over.

11 THE COURT: The only enclave of federal jurisdiction  
12 that I am aware of that's anywhere close to us here is the  
13 Warren Air Base, but, of course, another one that readily comes  
14 to mind is the Wind River Indian Reservation. Those are both  
15 federal enclaves.

16 Now, is it your contention that the only way you could  
17 have been served with process from this court was on a federal  
18 enclave such as the Indian reservation or the air base?

19 MS. RICE: No.

20 THE COURT: Well, you go ahead and tell me what your  
21 argument is, then.

22 MS. RICE: What they are attaching is not under the  
23 U.S. federal government ownership.

24 THE COURT: So you're saying that the United States  
25 could only enforce its tax laws against property in a federal

1 enclave?

2 MS. RICE: What I would like you to do, sir, is to  
3 look into the information that we have and you will find it.

4 THE COURT: Well, I'm still not sure I understand what  
5 your argument is, but I will let you go ahead and explain it.

6 MS. RICE: Thank you.

7 I will repeat the number one: This Court lacks in rem  
8 jurisdiction to foreclose on real or personal property in  
9 Wyoming not situate in a federal enclave or territory of the  
10 United States. That refers to the U.S.C.

11 Two, this Court lacks subject matter jurisdiction  
12 under 26 U.S.C. 7402(e) as this is not an action to quiet title  
13 and no facts were pled in the complaint as such. That's  
14 referring to some of the other papers.

15 Three, this Court lacks jurisdiction over the subject  
16 matter under 28 U.S.C. Sections 1340, 1345 and 26 U.S.C.  
17 7402(a) on ground that the chief counsel of the IRS lacks the  
18 capacity and standing to foreclose on property not in  
19 territories or enclaves of the United States as the scope and  
20 purview of his power is statutorily -- statute -- statutorily  
21 limited to cases, actions, territory and property within the  
22 exclusive legislative jurisdiction of the United States, i.e.,  
23 within the District of Columbia, possessions and territories of  
24 the United States. See paragraphs 3(b), 3(c), 5(i) and 9 of my  
25 amended motion.



1 THE COURT: Now, why do you say that?

2 MS. RICE: The law says that, sir.

3 THE COURT: The definitions of the jurisdiction of  
4 this court have been that the COURT has jurisdiction of matters  
5 involving a question of federal law, or in civil cases they  
6 have jurisdiction of diversity cases between citizens of  
7 different states involving an amount of over 75,000.

8 So in that sense, the Court is of limited jurisdiction  
9 and its cases must arise under the federal laws. But a tax  
10 case, which yours is, arises under the federal tax laws. So I  
11 think under those circumstances the Court would have  
12 jurisdiction.

13 MS. RICE: According to this number three, to me that  
14 explains it.

15 May I go on, sir?

16 THE COURT: Yes, of course.

17 MS. RICE: Four, this Court lacks subject matter  
18 jurisdiction due to the plaintiff's lack of capacity to  
19 initiate an action against someone other than a U.S. citizen  
20 subject, see paragraph 8, et seq. of my amended motion.

21 Now, this is my argument. Without opposition by the  
22 plaintiff to my position that this court lacks both in personam  
23 and in rem jurisdiction, the Court summarily rejected my  
24 position without providing findings of fact and conclusions of  
25 law supporting its denial. On none of the issues did the Court

1 cite controlling authority to reject my status and supporting  
2 arguments.

3           Rather, the Court merely adopted the Magistrate's  
4 report which restated the plaintiff's misuse of U.S. V Cooper,  
5 170 Federal 3d 691, a Seventh Circuit case that is neither  
6 controlling nor on point to the issues raised in my motion to  
7 quash. This may be because there is no decision in the Tenth  
8 Circuit directly on point.

9           On the issues of whether the chief counsel has  
10 standing to authorize this case and whether the Court has  
11 in rem jurisdiction to foreclose on real or personal property  
12 outside a federal enclave, this Court was silent.

13           Because my position involves controlling questions of  
14 law as to which there is substantial ground for difference of  
15 opinion, should the Court sustain its order denying my motion  
16 to quash, an immediate appeal from the order may materially  
17 advance the ultimate termination of this litigation.

18           I, therefore, ask the Court, should it again deny my  
19 motion to quash, that it make findings of fact and conclusions  
20 of law and to certify its order for interlocutory appeal.

21           In conclusion, my motions to quash set forth  
22 controlling questions of law as to the jurisdiction to which  
23 there is substantial ground for difference of opinion. Since  
24 any one of the arguments that I raised would materially advance  
25 the ultimate termination of this case, I contend that

1 certification fulfills the second requirement under 28 U.S.C.  
2 Section 1292(b).

3 Lastly, I add that an immediate appeal would  
4 facilitate the resolution of these issues. A decision by the  
5 Tenth Circuit Court of Appeals would protect other Wyoming  
6 citizens from claims outside the jurisdiction of the United  
7 States. A decision by the appellate court on the topics would  
8 be beneficial in determining the course of future litigation on  
9 these positions.

10 For these reasons, as well as the reasons stated in my  
11 motion to quash, I move this Court to reverse itself and grant  
12 my motion to quash, or, in the alternative, to make findings of  
13 facts and conclusions of law in support of its denial of my  
14 motion to quash and to certify the issues for interlocutory  
15 appeal.

16 That is all I have.

17 THE COURT: Anything further?

18 I've got a couple of questions for you, Mrs. Rice.

19 First, you are obviously a resident of Sheridan  
20 County; is that correct?

21 MS. RICE: Yes.

22 THE COURT: And have been for many, many years?

23 MS. RICE: Yes.

24 THE COURT: Very well. And you are a United States  
25 citizen also, are you not?

1 MS. RICE: Yes, under the status that is in my  
2 explanation.

3 THE COURT: And were you served with process, that is,  
4 a summons issued by this court after the case was first  
5 brought?

6 The Government filed the action on January 19th, 2007  
7 to reduce to judgment the federal tax assessments. Were you  
8 served with notice of that filing?

9 MS. RICE: On February 14th.

10 THE COURT: On February 14th. All right.

11 And then am I correct in my understanding that you  
12 didn't do anything about it?

13 MS. RICE: No, we replied to it and you have all of  
14 that information.

15 THE COURT: You didn't --

16 MS. RICE: We have done everything properly.

17 THE COURT: You didn't reply to it in any way?

18 MS. RICE: I have a whole file and I don't have it  
19 with me.

20 THE COURT: Is this not the first time that you have  
21 appeared in the United States District Court for the District  
22 of Wyoming?

23 MS. RICE: Yes, sir. I was called in last June.

24 THE COURT: All right. And you heretofore filed a  
25 motion to quash service of process as well as a motion to

1 dismiss, and I understand that you did not appear before the  
2 Magistrate in any way either.

3 MS. RICE: I was not called to appear before the  
4 Magistrate.

5 THE COURT: All right. And consequently, the  
6 Magistrate ended up denying your motion to quash and your  
7 motion to dismiss and recommended to this Court that it find  
8 that you were properly served, that there was venue in this  
9 case, and that the actions of the United States were to collect  
10 the taxes that you owed, and, therefore, it recommended that I  
11 deny your motions, which I have done.

12 Tell me this: Did you receive notice of that  
13 decision?

14 MS. RICE: The decision that was made in June?

15 THE COURT: The decision of this Court that the  
16 Magistrate -- adopting the Magistrate's recommendations.

17 MS. RICE: Sir, we have been --

18 THE COURT: I believe that was filed on June 15th of  
19 last year.

20 MS. RICE: All that has been responded. There is on  
21 file all of the replies, all of the papers. It is all in the  
22 paperwork that has been put in.

23 THE COURT: All right. So you did have notice of it?

24 MS. RICE: There has been a response whenever  
25 necessary, sir.

1 THE COURT: Well, Mrs. Rice, was there any reason that  
2 you then didn't appear --

3 MS. RICE: In June, sir?

4 THE COURT: -- and respond?

5 MS. RICE: In June? Are you talking about the June  
6 hearing in your court?

7 THE COURT: Yes.

8 MS. RICE: I was in Saint Vincent's Hospital in  
9 Billings, Montana on that day, and my son reminded me. He  
10 said -- it was the very morning that you were -- I had had an  
11 angiogram and gone home to Sheridan, which doesn't have any  
12 kind of cardiology treatment, and I had a hematoma and they  
13 just didn't do anything to stop it. And I had to go to  
14 Billings, and it was on the very 4th that I was operated on,  
15 sir, to save my life. And I wrote and explained it. The  
16 papers are all here. There's an explanation here.

17 THE COURT: Well, I've gone through this file and I  
18 haven't seen anything that indicated that you told the Court,  
19 namely me, that you were in the hospital and unable to respond  
20 and asked for more time.

21 MS. RICE: We did not do that. We sent in an  
22 explanation. After I got out of the hospital it was sent in.  
23 And I saw that paper last night. I have it in my briefcase.

24 THE COURT: Well, Mrs. Rice, the courts of this  
25 country, including this court, operate on a system of

1 deadlines. You either respond by a certain time or you are  
2 defaulted. Were you aware of this?

3 MS. RICE: Yes, we were. And I don't know --

4 THE COURT: Well, then why --

5 MS. RICE: -- I was incapacitated where I couldn't do  
6 anything about it, and I had --

7 THE COURT: Well, why didn't you do anything about it?

8 MS. RICE: Sir, I was in the hospital from May 29th  
9 on. And I suppose I could have called the Court from there,  
10 but it did not enter my mind.

11 THE COURT: When did you get out of the hospital.

12 MS. RICE: Sir?

13 THE COURT: When did you get out of the hospital?

14 MS. RICE: It was about -- I can't remember if it was  
15 the 8th or the 11th, something like that, of June.

16 THE COURT: After you got out of the hospital, did you  
17 ever --

18 MS. RICE: That was when --

19 THE COURT: -- write to me or file a motion of any  
20 type asking for more time?

21 MS. RICE: I -- I don't remember what it said, sir,  
22 but there is a paper in there that explains the situation. And  
23 I apologize that I didn't let you know. I sincerely apologize  
24 for not knowing that.

25 THE COURT: Well, even if you were given more time

1 because of your illness and hospitalization, could you have  
2 presented some valid defense to the action to foreclose these  
3 tax liens?

4 MS. RICE: I believe, sir, that you have in your  
5 records -- we were -- what we were doing at that time was  
6 arguing the same thing we are arguing now -- we, being me and  
7 the frog in my pocket -- that it didn't -- it was not under the  
8 jurisdiction. We had -- we had -- as soon as I got that, I was  
9 advised and we did everything that we were supposed to do in  
10 saying this is why we don't belong in that court and still  
11 arguing the same facts I'm arguing today, sir. And that's  
12 really all I have to say about it.

13 THE COURT: Well, may I ask you this: Are you a  
14 member of any tax protest organizations?

15 MS. RICE: What does -- no, sir.

16 THE COURT: Well, now, there are several organizations  
17 of that type. I am not familiar with them all, but over the  
18 years I have had representatives of different tax protest  
19 organizations appear in this court, such as -- Posse Comitatus  
20 is one of them -- and they usually take positions that are  
21 similar to the ones you're taking now.

22 MS. RICE: But, sir, that's irrelevant to what I am  
23 arguing. I have no connection with quasi-organizations.

24 THE COURT: And no member of any of those  
25 organizations is helping you with your responses?



1 MS. RICE: Sir, no, sir.

2 THE COURT: Have you consulted a lawyer, by any  
3 chance --

4 MS. RICE: Yes, I have.

5 THE COURT: -- regarding your responses?

6 MS. RICE: Yes, I have. Of course I have.

7 THE COURT: And is that a person who is admitted to  
8 practice before this court?

9 MS. RICE: Not in the state of Wyoming, sir. That's  
10 why I'm --

11 THE COURT: I see. There's no one in Wyoming?

12 MS. RICE: Not that I know of.

13 THE COURT: I see. Well, what I'm getting at here,  
14 Mrs. Rice, is this: If I were to give you additional time, say  
15 another ten days, in which to respond, is there any response  
16 that you could make which would convince the Court that you had  
17 a valid defense?

18 MS. RICE: I thought, sir, that what I have would  
19 speak for itself. There are a lot of people that don't have  
20 any understanding of this, but that's why we have stated the  
21 details in this. And you have to understand with an open mind,  
22 sir, that this is how it actually is in the law. And I -- it  
23 just -- the papers speak for themselves, I believe.

24 THE COURT: Well, may I ask you this: These are liens  
25 against you because you didn't pay your taxes. Tell me why you

1     didn't pay.

2             MS. RICE: I did in what I read, sir, and I will give  
3     you a copy.

4             THE COURT: Well, just tell me, is there a reason that  
5     you didn't?

6             MS. RICE: Let me go back here.

7             If you read Title 26 of the United States Code, and in  
8     my number three that I stated I am not a U.S. citizen subject,  
9     which means -- if you know the tax laws what they really say  
10    there probably isn't anyone in here who is subject to that.  
11    And I think, just for your information -- and I followed your  
12    career all your life and my life that you have been in public  
13    office and found you to be very honorable. And I think it  
14    would be worth looking into. It is really eye opening, sir.

15            And I intend to prove that as my destiny that -- and  
16    there are a lot of people who are talking about changing the  
17    tax laws and this is the reason that is behind a lot of that.  
18    Some people have other reasons, maybe. But anyway, if you  
19    would please read this and if you would like to take the  
20    time -- I would grant, that's up to you. But that's all I have  
21    to say at this time.

22            THE COURT: All right. Thank you, Mrs. Rice.

23            Mr. Pitman, I'll be glad to hear you.

24            MR. PITMAN: Good morning, Your Honor. For the  
25    record, I'm Michael Pitman from the Tax Division of the

1 Department of Justice here representing the plaintiff, the  
2 United States, today.

3 I would like to begin by thanking the Court for  
4 accommodating the Government and allowing me to appear without  
5 an Assistant United States Attorney this morning.

6 As I understand it, there's currently two related  
7 issues before the Court.

8 THE COURT: Mr. Pitman, I'm sorry, you've got to speak  
9 directly into that mike. It isn't the world's best mike, but  
10 this morning I forgot to put my hearing aid in, and, as a  
11 result, I am without it so you've got to speak a little louder.

12 MR. PITMAN: Very well, Your Honor. I'm sorry.  
13 Thought I was blasting people out. Too much volume.

14 It is my understanding that we're here today to  
15 evaluate two related issues, the first of which is the  
16 defendant's motion that the Court reconsider its order denying  
17 her motion to quash service and dismiss the complaint or  
18 otherwise certify that decision for an interlocutory appeal.

19 As we have heard and it is my understanding based on  
20 the pleadings, the defendant's position is that as a resident  
21 of the state of Wyoming she's not subject to federal  
22 jurisdiction, that the United States is somehow distinct from  
23 the United States of America.

24 These are positions that I imagine the Court has  
25 encountered in the past. They're positions that have been

1 evaluated by every circuit in the country and unanimously  
2 rejected, including the Tenth Circuit. And there's case law  
3 cited in the Government's opposition to the defendant's motion.

4 Accordingly, it is the Government's position that  
5 there's no basis to reconsider the decision to deny the  
6 defendant's motion to quash or dismiss, and there is certainly  
7 no substantial grounds for difference of opinion -- excuse  
8 me -- regarding the law that would justify certification under  
9 28 1292(b).

10 The second issue before the Court today is the entry  
11 of default against the defendant in this case. Just as  
12 background, Your Honor, this case is now almost a year old and  
13 there's no -- no answer has been filed. The plaintiff did file  
14 what -- a motion under Rule 12, a motion to quash or dismiss.  
15 And when that motion was denied, obviously under the federal  
16 rules the clock starting ticking for her to file her answer.

17 Instead, she filed the motion to reconsider or to  
18 certify, and it is my understanding based on her pleadings that  
19 she interpreted that pleading as a responsive pleading under  
20 the rule or was filed in lieu of an answer, but of course under  
21 28 1292(b) the filing of a motion to certify does not stay a  
22 district court action absent court order. And I believe that  
23 the defendant was aware of that requirement in that she  
24 requested a stay be entered in her motion.

25 Of course the Court did not issue a stay. That motion

1 is still pending. Nevertheless, the defendant is obligated to  
2 continue litigating this action. By failing to file a  
3 responsive pleading for several months now, she has, indeed,  
4 defaulted, and accordingly, the entry of default is  
5 appropriate.

6 THE COURT: With regard to the motion to appeal the  
7 case -- and of course that's her right to do so. I have no  
8 doubt about that -- do you have any objection to a stay of the  
9 proceedings to foreclose the tax liens pending appeal?

10 MR. PITMAN: The only opposition the Government would  
11 raise to a stay is -- are basically timely concerns. This  
12 matter has been proceeding very slowly, has been pending for  
13 quite a while. An appeal is almost certainly -- an appeal of  
14 the Court's decision to deny the motion, in my opinion, is  
15 entirely frivolous and could actually expose Miss Rice to  
16 sanctions by the circuit court for raising these arguments once  
17 again after they have been so thoroughly rejected.

18 I don't believe that it would -- I'm sorry, Your  
19 Honor.

20 THE COURT: The Court of Appeals does have expedited  
21 methods of reviewing cases, and I think a committee of that  
22 court reviews cases such as this and place -- and can place  
23 them on an expedited hearing basis. I'm not sure how long such  
24 an expedited track would take, but I would guess it could be  
25 six to eight months.

1           And would you feel that the United States would incur  
2   any harm to its position by a stay for something like that  
3   period of time?

4           MR. PITMAN: Well, the primary harm would be a  
5   possible dissipation of the funds and/or property at issue as  
6   well as possible destruction of evidence or loss of memories of  
7   witnesses; basically complication of future discovery.

8           THE COURT: All right. Well, go ahead, Mr. Pitman.

9           MR. PITMAN: I believe -- in essence, Your Honor, I  
10   don't think that the requirements of 28 U.S.C. 1292 have been  
11   satisfied in this case in that there's no grounds whatsoever  
12   for a dispute regarding the governing law. And accordingly,  
13   the Government would oppose the defendant's motion to certify  
14   and for reconsideration.

15          THE COURT: Anything further?

16          MR. PITMAN: No, Your Honor.

17          THE COURT: All right, thank you.

18          MR. PITMAN: Thank you.

19          THE COURT: Mrs. Rice, you're entitled to a rebuttal  
20   argument to rebut the arguments that Mr. Pitman just made.

21          MS. RICE: I just happen to have one. I just happen  
22   to have one, sir, Your Honor.

23                The plaintiff's position seems to be that because I  
24   did not file an answer subsequent to this Court's denial of my  
25   motion to quash, but, instead, filed a motion to reconsider,

1 or, in the alternative, a motion for findings of fact and  
2 conclusions of law and to certify the order for appeal, that  
3 the plaintiff is entitled to an entry of default and a default  
4 judgment.

5 Can you hear me all right, sir? This is a little  
6 higher than it was.

7 THE COURT: Yes, that's fine.

8 MS. RICE: The fact is that I have not failed to file  
9 an answer nor am I in default because I have been waiting for  
10 the Court to enter a ruling on my motion to reconsider. The  
11 proverbial ball has been in your court, Your Honor.

12 THE COURT: Well, I believe that the Court has entered  
13 an order on your motion. How can you say that it hasn't? Did  
14 you not receive the order of this Court -- let's see. Of  
15 course, the clerk's order that you were in default on  
16 August 13th, you know, when the clerk acts for this Court,  
17 that's the Court acting.

18 MS. RICE: We responded to that too, sir. But there  
19 was one I received in July, I believe.

20 THE COURT: All right. Well, go ahead, Mrs. Rice.

21 MS. RICE: Okay. It, therefore, remains my position  
22 that the plaintiff is not entitled to the entry of default by  
23 the clerk of the court and that that entry should be vacated.  
24 The plaintiff is using a tortured construction of 28 U.S.C.  
25 1292(b) as a basis for their reasoning that I was required to

1 file an answer notwithstanding my motion to reconsider.

2           However, 1292(b) merely provides that a stay may be  
3 granted upon application for an interlocutory appeal. Because  
4 I have made no application for an interlocutory appeal, but  
5 have, rather, instead merely asked this Court to certify the  
6 issues for appeal so that I may apply for an appeal, the  
7 plaintiff's use of the statute is -- authority obligating me to  
8 file an answer while awaiting this Court's ruling on my motion  
9 to reconsider is, at best, specious. The entry of default by  
10 the clerk should, therefore, be vacated.

11           And that's all I have to say, sir.

12           THE COURT: Well, now, are you aware of the order by  
13 this Court of June 15th? And this was an order which adopted  
14 the Magistrate's recommendation and denied all of your  
15 outstanding motions, which, of course, would include motions to  
16 reconsider and anything else. And they were all denied last  
17 June 15th.

18           MS. RICE: Yes, sir, I received that.

19           THE COURT: Well, why, then, do you say that we  
20 haven't ruled on those?

21           MS. RICE: I would have to talk to my legal advisors  
22 and find out what the reasoning is and try to make that clear  
23 for you, sir, if you would allow us to do that.

24           THE COURT: Well, this has gone on quite a long time  
25 and I don't -- I think we've got to decide it right now. So



1 unless you have more to tell me about it, I --

2 MS. RICE: Would you allow me to take a break and make  
3 contact for 15 minutes and see if there's anything I can help  
4 you with?

5 THE COURT: All right. I will give you a 15-minute  
6 recess. It is now 11:27, so I will give you a recess until  
7 11:45.

8 MS. RICE: Thank you, sir.

9 THE COURT: All right. We will stand in recess.

10 (Recess taken 11:27 a.m. until 11:45 a.m.)

11 THE COURT: Mrs. Rice, the recess has expired. Have  
12 you had the opportunity to get the advice and counsel that you  
13 were seeking?

14 Come forward.

15 MS. RICE: Yes, sir. I have nothing further to say.

16 THE COURT: All right. I will be glad to hear  
17 whatever you wish to tell me.

18 MS. RICE: No, I say I have nothing further to say,  
19 sir.

20 THE COURT: Well, Mrs. Rice, the Court is aware of the  
21 fact that you have your home at stake, and I think you also  
22 have an undivided interest in 118 acres of ranchland that  
23 your -- I think it is owned by your family.

24 Do you realize that these actions that you're taking  
25 are endangering these interests?

1 All right. If you have nothing to say, the Court  
2 finds that the arguments of the defendant, Jane Joyce Rice, are  
3 without any merit whatsoever, in fact or in law, and the Court  
4 finds that Mrs. Rice has not presented the Court with any  
5 suitable legal reason for not having appeared, that she has had  
6 time since the entry of the order of June 15th to seek  
7 reconsideration on the ground that she was in the hospital at  
8 the time that she defaulted before the Court.

9 And that would have been a good ground for an  
10 extension of time, but, Mrs. Rice, you haven't asked for it.

11 And now on December 4th, 2007, the clerk signed an  
12 entry of default and I think that that default was well taken.  
13 So at this time the motions to quash and the motions to dismiss  
14 and the motions for rehearing thereon are all denied.

15 And, Mr. Pitman, I understand that what you seek now  
16 is a judgment of foreclosure?

17 MR. PITMAN: If I may, Your Honor, the Government  
18 is -- the Government would have been -- would be willing to  
19 allow the case to proceed despite the proper default were  
20 Miss Rice able to present any substantive defense.

21 However, I think today she told us that she has none,  
22 and so I think that a judgment of default is appropriate as  
23 long as the Court has determined, properly in my opinion, that  
24 her legal arguments against the assessments at issue are  
25 specious.

1 THE COURT: Well, the judgment of default entered by  
2 the clerk is obviously well taken. And now the question is  
3 what's next? And I think the next thing would be a judgment of  
4 foreclosure.

5 MR. PITMAN: I would be glad to prepare a proposed  
6 judgment for Your Honor.

7 THE COURT: Well, I want you to prepare the necessary  
8 order of foreclosure and submit a copy to Mrs. Rice.

9 And, Mrs. Rice, you may have ten days from the date of  
10 receipt of that to make any motions or arguments you wish  
11 before the Court. I will be glad to hear you. But if you  
12 don't make any within a ten-day period, I will assume that you  
13 have, as you just now said, nothing more to say, and the  
14 judgment of foreclosure may be entered.

15 Now, the judgment shall then be stayed pending appeal.  
16 And your process of appealing is this: Within ten days of the  
17 entry of that order, you must file a notice of appeal. And  
18 then you have a duty of assembling the record on appeal and  
19 getting a transcript of any of the proceedings of this court  
20 that you feel should be brought to the attention of the Court  
21 of Appeals of the Tenth Circuit.

22 And then, of course, there are times that that Court  
23 may set for the filing of the record on appeal and the briefs.  
24 And those times must be scrupulously observed. You cannot  
25 expect that Court to be as liberal and forgiving as this Court

1 has been. And it operates on a difficult time schedule, and it  
2 just doesn't brook delay of any type. So you've got to be  
3 very, very careful not to commit any defaults there.

4 Is there anything else, Mr. Pitman?

5 MR. PITMAN: No, Your Honor. Thank you, very much.

6 THE COURT: All right. Well, prepare what the  
7 Government wants on this case and show that Mrs. Rice's  
8 arguments have been considered and found to be without legal  
9 merit and denied.

10 MR. PITMAN: I will do that, Your Honor.

11 THE COURT: All right. Fine.

12 And the court will stand in recess subject to call --  
13 or until 1:30.

14 (Hearing proceedings concluded

15 11:55 a.m., January 4, 2008.)  
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